

Application No. 10/027,006Docket No.: M1912.0025REMARKS

Claims 1 to 55 are pending in this cases. Claims 1, 14, 26, 32, 38-41, and 48-49 have been rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 6,857,009 to Ferriera and U.S. Patent No. 6,788,696 to Allan. Claims 2, 15, 42 and 50 have been rejected under 35 U.S.C. § 103(a) over Ferriera and Allan further in view of admitted prior art. Claims 1 and 14 have been rejected under 35 U.S.C. § 102(e) over Ferreria. Claims 1-53 have been rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Claims 1-53 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards a the invention. Claims 2-9, 11-13, and 16-25 have been objected to due to informalities. By this Amendment, applicant respectfully reverses the above rejections and objection, but amended the claims to address the formal issues raised in the Office Action. Other than the amendments to change the dependencies in claims 6, 8 - 10, 19, and 21 - 23, the rest of the claim amendments do not narrow the scope of any claim element or of any claim. Reconsideration of the subject application in view of the above amendments and the following remarks is respectfully requested.

In paragraph 2 of the Office Action, claims 1, 14, 26, 32, 38-41, and 48-49 have been rejected under § 103 over Ferriera and Allan. This rejection is respectfully traversed.

Independent claims 1, 14, 26, 32, 38-40, and 48 each require a one-way splicing from the server to the client, which is conducted from the time of relaying a data acquisition request from the client till the end of transmission of an acknowledgement packet from the server to the client. In other words, the one-way splicing from the server to the client in the claimed invention is carried out during a specified time frame as required in the claimed invention.

The Office Action admitted that Ferriera teaches that a "configuration manager receives a request for the client and splices the connections end to end or conducts one way splicing in the direction of the client to the server." The Office Action however asserted that "it would have been obvious for one of ordinary skill in the art at the time of the invention to implement splicing the connections end to end for conducting a one way spicing in the direction of the server to client in order to send data in the opposite direction from the server to the client." Applicant respectfully disagrees.

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Besides the lack of teaching in connection with the splicing direction as required in the claimed invention, Ferriera also failed to teach that such slicing was conducting within the time frame as required in the claimed invention, *i.e.*, from the time of relaying a data acquisition request from the client till the end of transmission of an acknowledgement packet from the server to the client. Because the Office Action does not discuss the above feature in connection with the time frame, the Office Action failed to establish a *prima facie* case of obviousness against independent claims 1, 14, 26, 32, 38-40, and 48.

Moreover, applicant submits that the difference between Ferriera and the claimed invention is not obvious as suggested in the Office Action. The splicing operation of Ferriera is carried out to provide proxy services to users configured to use a proxy and to allow the user to access a network without changing client network settings. There is neither motivation for nor suggestion to one skilled in the art to reverse the splicing direction as taught by Ferriera and splice in the direction from server to client, in order to meet the large volume of data frequently transferred and provide an efficient communication as the claimed invention does. Therefore, the claimed invention patentably distinguishes over the cited prior art. Accordingly, the above rejection is believed to be overcome.

In paragraph 3 on page 8 of the Office Action, claims 2, 15, 42 and 50 have been rejected under § 103 over Ferriera and Allan and further in view of admitted prior art. This rejection is respectfully traversed.

Allan was cited in the Office Action for the teachings corresponding to the elements in the above claims 2, 15, 42 and 50. The Office Action does not show that Allan remedies the deficiencies of Ferriera in connection with independent claims 1, 14, 40, and 48. Therefore, claims 2, 15, 42 and 50 are allowable for at least the same reasons that independent claims 1, 14, 40, and 48 are allowable. Accordingly, the above rejection is believed to be overcome.

In paragraph 4 on page 9 of the Office Action, claims 1 and 14 have been rejected under § 102 as being anticipated by Ferreria because the Office Action interpreted all of the claim features after the "wherein" clauses as optional limitations. This rejection is respectfully traversed.

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Section 2111.04 of the Manual of Patent Examining Procedure ("MPEP") states the following:

Claim scope is not limited by claim language that suggests or makes optional but does not require steps to be performed, or by claim language that does not limit a claim to a particular structure.

MPEP § 2111.04 also lists several examples of claim language (including "wherein" clauses) that may raise a question as to the limiting effect of the language in a claim. However, § 2111.04 does not stipulate that those examples suggest or make optional. Rather, § 2111.04 sets forth that "[t]he determination of whether each of these clauses is a limitation in a claim depends on the specific facts of the case."

In the present case, the "wherein" clauses in claims 1 and 14 are used to define the claim element of "the switching apparatus," which has been introduced prior to such "wherein" clauses. The "wherein" clauses then recite steps to be performed and/or otherwise limit "the switching apparatus" to a particular structure, none of which can be ignored.

The Office Action has arbitrarily held the "wherein" clauses in claims 1 and 14 as claim language suggesting or making optional before evaluating the claim features recited in the "wherein" clauses. Applicant respectfully submits that such conclusion is not sustainable under the above MPEP provisions. Accordingly, the above rejection is believed to be overcome.

In paragraph 6 on page 10 of the Office Action, claims 1-53 have been rejected under § 112, first paragraph, as failing to comply with the written description requirement. Specifically, the Office Action referred to the claim features that switching apparatus performs as well as successively conducts retransmission control and flow control of communication in the direction from said client to said server as required in claims 1, 14, 26, and 32; that the one way splicing is performed in the server as required in claims 38 and 40; and that the one way splicing is performed in the client as required in claims 39 and 48. This rejection is respectfully traversed.

In response, applicant refers to the section of "Summary Of The Invention" on pages 12 - 30 of the specification. For example, the claim feature of successive retransmission control and flow control of communication in the direction from the client to the server is disclosed on, at least, page 13, line 20; page 15, line 10; page 20, line 5, *etc.* On page 28, line 20 and page 29,

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line 15 of the specification, it discloses that the switching program or the server transmits the packet to the client by one-way splicing, which supports claims 38 and 40. Page 29, line 25 of the specification discloses that the client receives the packet from the server by one-way splicing.

In view of the above, applicant respectfully submits that claims 1-53 are adequately supported by the disclosure. Accordingly, the above rejection is believed to be overcome.

In paragraph 8 on page 11 of the Office Action, claims 1-53 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In response, applicant has carefully reviewed and amended all the claims to address the formal issues raised in the Office Action or to improve the syntax. With respect to the term "communication partner" (see, e.g., claims 4, 5, 17, 18, 27, 42, 43, 50, and 51), the term can generally refer either a transmitter or a recipient a communication system. For example, a communication partner can be a client, a server, or other intermediate component a client or server communicates. Moreover, applicant respectfully refers to the disclosures on page 1, lines 11 - 17 of the specification for support for and explanation of the phrase "below a transport layer of packet" as recited in claims 27 and 33. In view of the above remarks and claim amendments, the above rejection is believed to be overcome.

In paragraph 9 on page 14 of the Office Action, claims 2-9, 11-13, and 16-25 have been objected to for reasons set forth on page 14. This rejection is respectfully traversed. The "wherein" clauses are used in these claims to further define claim elements, which have been already recited prior to the "wherein" clauses, rather than introducing new claim elements. Accordingly, such use of the wording "wherein" is believed to be proper.

Applicant has shown that claims 1 to 55 are patentable over the cited art and hereby respectfully requests that the rejections and objection of the pending claims be withdrawn. Each of the claims 1 to 55 in this application is believed to be in immediate condition for allowance and such action is earnestly solicited.

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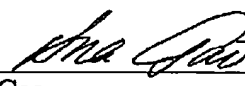
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No fee is believed to be due for this Amendment. Should any fees be required, please charge such fees to Deposit Account No. 50-2215.

Respectfully submitted,

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